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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* SANTOSH PAUL ABRAHAM, SIMONE MERLIN,  
SAMEER VERMANI, and HERMANATH SAMPATH

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Appeal 2016-007085<sup>1</sup>  
Application 13/247,023  
Technology Center 2400

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Before JOHN A. JEFFERY, ERIC S. FRAHM, and  
JENNIFER L. McKEOWN, *Administrative Patent Judges*.

FRAHM, *Administrative Patent Judge*.

DECISION ON APPEAL

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<sup>1</sup> As noted by Appellants in the Appeal Brief (App. Br. 4), this application is related to U.S. Patent Application Serial No. 13/247,062, which also claims benefit to U.S. Provisional Patent Application Nos. 61/387,542, 61/389,495, 61/405,283, 61/422,098, 61/432,115, 61/405,194, 61/409,645, and 61/414,651.

## STATEMENT OF THE CASE

This is a decision on appeal under 35 U.S.C. § 134(a) of a final rejection of claims 1–44. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

We have reviewed Appellants’ arguments in the Appeal Brief (App. Br. 8–28) and the Reply Brief (Reply Br. 2–12) that the Examiner’s rejections (*see* Final Act. 2–10; Ans. 3–14) of (i) all of the independent claims 1, 15, 29, 43, and 44 under 35 U.S.C. § 103(a) as being unpatentable over Matsumoto (US 2009/0143029 A1; published June 4, 2009) and Stacey (US 2012/0076179 A1; published Mar. 29, 2012); and (ii) all of the dependent claims 2–14, 16–28, and 30–42 as being unpatentable over the base combination of Matsumoto and Stacey taken with various other tertiary references, are in error. We have also reviewed the Examiner’s obviousness rejections (Final Act. 2–10; Ans. 3–14), as well as the Examiner’s response to Appellants’ arguments in the Appeal Brief (Ans. 14–19).

The Examiner relies on Matsumoto (Fig. 10; ¶ 166) as disclosing “a message comprising a null data packet announcement, the null data packet announcement comprising a sequence number identifying the null data packet announcement” recited in independent claim 1 (Final Act. 2–3; Ans. 3 and 14–15), and commensurate limitations found in all remaining independent claims 15, 29, 43, and 44. We agree with the Examiner (Final Act. 2; Ans. 3) that Matsumoto teaches or suggests a message 709 in Figure 10, and the message 709 includes a received sequence number 1002 that in certain conditions can be a null data packet. However, we do not agree with the Examiner, and the Examiner has not sufficiently articulated with rational underpinning as to how or why one of ordinary skill in the art at the time of

Appellants' invention would have understood, that either (i) Matsumoto's received sequence number 1002; and/or (ii) SSRC 1003 meet the limitation of "a message comprising a null data packet announcement, the null data packet announcement comprising a sequence number identifying the null data packet announcement" as recited in independent claims 1, 15, 29, 43, and 44.

To ascertain the scope and meaning of the claims, we consider the claim language, the Specification, the prosecution history, and relevant extrinsic evidence. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314–17 (Fed. Cir. 2005) (*en banc*). "[A]bsent contravening evidence from the specification or prosecution history, plain and unambiguous claim language controls the construction analysis." *DSW, Inc. v. Shoe Pavilion, Inc.*, 537 F.3d 1342, 1347 (Fed. Cir. 2008).

Appellants' contentions (App. Br. 10–13; Reply Br. 2) that the intrinsic evidence of paragraphs 68–71 and 73 of Appellants' Specification delineates a difference between a null data packet and a null data packet *announcement* are persuasive. Appellants' Figure 4 shows, and paragraph 68 of the Specification describes, two separate elements, a "Null Data Packet Announcement (NDPA) frame 402," and a "Null Data Packet (NDP) frame 404." "The NDPA frame 402 may comprise Association Identifiers (AIDs) of the STAs [user stations] that should transmit computed CSI feedback messages to the AP [access point]" (§ 68), and "[t]hose STAs that are not identified in the NDPA may ignore the following NDP frame 404" (§ 69). Additionally, as show in Figure 5, "NDPA frame 422 may comprise one or more of a frame control field 502, a duration field 504, an RA broadcast field 506, a TA field 508 a CSI sequence field 512, an STA information field

514, and a CRC field 516” (¶ 73). In this light, we agree with Appellants’ contentions (App. Br. 10–13; Reply Br. 2–4) that Matsumoto fails to disclose a null data packet *announcement*.

Based on the foregoing, we concur with Appellants’ assertions (*see* App. Br. 9–13; Reply Br. 2–4) that the cited portions of Matsumoto do not teach or suggest the limitation (i) “a message comprising a null data packet announcement, the null data packet announcement comprising a sequence number identifying the null data packet announcement” recited in independent claim 1; or (ii) the commensurate limitations recited in remaining independent claims 15, 29, 43, and 44.

In addition, we agree with Appellants’ arguments (App. Br. 13–14) that the Examiner’s motivation for making the combination, “in order to efficiently transport short frame using a low MCS. ¶ [0019]” is conclusory (Final Act. 3; Ans. 4). The Examiner’s response to Appellants’ arguments merely references *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007) (Ans. 16), and does little to persuade us that (i) one of ordinary skill in the art would find it desirable to modify Matsumoto (which does not disclose a null data packet *announcement* as discussed *supra*) with Stacey; and/or (ii) the resultant combination would teach or suggest “a message comprising a null data packet announcement, the null data packet announcement comprising a sequence number identifying the null data packet announcement” as recited in independent claim 1, and similarly recited in remaining independent claims 15, 29, 43, and 44.

Accordingly, we do not sustain the Examiner’s obviousness rejections of independent claims 1, 15, 29, 43, and 44, as well as corresponding dependent claims 2–14, 16–28, and 30–42 depending respectively therefrom.

## CONCLUSION

The Examiner erred in rejecting independent claims 1, 15, 29, 43, and 44 under 35 U.S.C. § 103(a), as well as claims 2–14, 16–28, and 30–42 depending respectively therefrom.

## DECISION<sup>2</sup>

We reverse the Examiner’s obviousness rejections of claims 1–44.

## REVERSED

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<sup>2</sup> We have decided the appeal before us. However, should there be further prosecution of claim 11, which depends from itself and recites “11. (Original) The method of Claim 11,” the Examiner’s attention is directed to 35 U.S.C. § 112, fourth paragraph (“a claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed”), and *Pfizer, Inc. v. Ranbaxy Labs. Ltd.*, 457 F.3d 1284, 1292 (Fed. Cir. 2006). Claim 11 was changed for the first time in the Feb. 3, 2015 amendment, although it alleges to be “(Original).” The claim amendment filed May 22, 2014 reflects that claim 11 should properly depend from claim 10. This is also evident from the recitation of “the field” in claim 11, which appears to refer back to “a field” recited in claim 10.